

DEC 19 2008

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

BRIAN H. PERLMUTTER, M.D.

License No. 27305

For the Practice of Allopathic Medicine
In the State of Arizona.

Case No. MD-08-0601A

**CONSENT AGREEMENT FOR
PROBATION**

CONSENT AGREEMENT

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Brian H. Perlmutter, M.D. ("Respondent"), the parties agree to the following disposition of this matter.

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Respondent acknowledges he has the right to consult with legal counsel regarding this matter.

2. By entering into this Consent Agreement, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. The Board may adopt this Consent Agreement or any part thereof. This Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Respondent.

5. This Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any

1 waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any
2 other pending or future investigation, action or proceeding. The acceptance of this
3 Consent Agreement does not preclude any other agency, subdivision or officer of this
4 State from instituting other civil or criminal proceedings with respect to the conduct that is
5 the subject of this Consent Agreement.

6 6. All admissions made by Respondent are solely for final disposition of this
7 matter and any subsequent related administrative proceedings or civil litigation involving
8 the Board and Respondent. Therefore, said admissions by Respondent are not intended
9 or made for any other use, such as in the context of another state or federal government
10 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
11 any other state or federal court.

12 7. Upon signing this agreement, and returning this document (or a copy thereof)
13 to the Board's Executive Director, Respondent may not revoke the acceptance of the
14 Consent Agreement. Respondent may not make any modifications to the document. Any
15 modifications to this original document are ineffective and void unless mutually approved
16 by the parties.

17 8. If the Board does not adopt this Consent Agreement, Respondent will not
18 assert as a defense that the Board's consideration of this Consent Agreement constitutes
19 bias, prejudice, prejudgment or other similar defense.

20 9. This Consent Agreement, once approved and signed, is a public record that
21 will be publicly disseminated as a formal action of the Board and will be reported to the
22 National Practitioner Data Bank and to the Arizona Medical Board's website.

23 10. If any part of the Consent Agreement is later declared void or otherwise
24 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force
25 and effect.

1 11. Any violation of this Consent Agreement constitutes unprofessional conduct
2 and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("[v]iolating a formal order,
3 probation, consent agreement or stipulation issued or entered into by the board or its
4 executive director under this chapter") and 32-1451.

5 12. ***Respondent has read and understands the conditions of probation.***

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8 BRIAN H. PERLMUTTER, M.D.

DATED: 12/18/08

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FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 27305 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-08-0601A after biological fluid tests on February 9 and May 20, 2008 were positive for low level Ethylglucuronide. Subsequently, Respondent contacted the Board's Addiction Medicine Consultant (Consultant) and admitted that he had been drinking alcohol intermittently over the last two months in violation of his April 15, 2005 Stipulated Rehabilitation Agreement.

4. Subsequently, Respondent signed an Interim Consent Agreement for Practice Restriction and on June 7, 2008, he entered a facility for treatment. Respondent was discharged from treatment on August 29, 2008. The Consultant reviewed the recommendations from the treatment facility, which did not recommend any practice restrictions or limitations and agreed that Respondent should participate in the Board's Monitored Aftercare Program (MAP). The Interim Practice Restriction was terminated on September 3, 2008 and Respondent signed an Interim Consent Agreement to Participate in the Monitored Aftercare Program. Respondent is in compliance with the terms and conditions of the Agreement

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CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(f) ("[h]abitual intemperance in the use of alcohol or habitual substance abuse.") and A.R.S. § 32-1401(27)(r) ("[v]iolating a formal order,

1 probation, consent agreement or stipulation issued or entered into by the board or its
2 executive director under the provisions of this chapter.”).

3 **ORDER**

4 **IT IS HEREBY ORDERED THAT:**

5 1. Respondent is placed on Probation for **five years** with the following terms
6 and conditions:

7 a. Respondent shall submit quarterly declarations under penalty of
8 perjury on forms provided by the Board, stating whether there has been compliance with
9 all conditions of probation. The declarations shall be submitted on or before the 15th of
10 March, June, September and December of each year, beginning on or before March,
11 2009.

12 b.1. **Participation**¹. Respondent shall promptly enroll in and participate in
13 the Board’s program for the treatment and rehabilitation of physicians who are impaired by
14 alcohol or drug abuse (“MAP”). Respondent’s participation in MAP may be unilaterally
15 terminated with or without cause at the Board’s discretion at any time after the issuance of
16 this Order.

17 2. **Relapse Prevention Group**. Respondent shall attend MAP’s relapse
18 prevention group therapy sessions one time per week for the duration of this Order, unless
19 excused by the MAP relapse prevention group facilitator for good cause such as illness or
20 vacation. Respondent shall instruct the MAP relapse prevention group facilitators to
21 release to Board Staff, upon request, all records relating to Respondent’s treatment, and
22 to submit monthly reports to Board Staff regarding attendance and progress. The reports
23 shall be submitted on or before the 10th day of each month.

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25 ¹ MAP participation is retroactive to September 3, 2008.

1 3. **12 Step or Self-Help Group Meetings.** Respondent shall attend
2 ninety 12-step meetings or other self-help group meetings appropriate for substance
3 abuse and approved by Board Staff, for a period of ninety days beginning not later than
4 either (a) the first day following Respondent's discharge from chemical dependency
5 treatment or (b) the date of this Order.

6 4. Following completion of the ninety meetings in ninety days,
7 Respondent shall participate in a 12-step recovery program or other self-help program
8 appropriate for substance abuse as recommended by the MAP Director and approved by
9 Board Staff. Respondent shall attend a minimum of three 12-step or other self-help
10 program meetings per week for a total of twelve per month. Two of the twelve meetings
11 must be Caduceus meetings. Respondent must maintain a log of all self-help meetings.
12 Board Staff will provide the log to Respondent.

13 5. **Board-Staff Approved Primary Care Physician.** Respondent shall
14 promptly obtain a primary care physician and shall submit the name of the physician to
15 Board Staff in writing for approval. The Board-approved primary care physician ("PCP")
16 shall be in charge of providing and coordinating Respondent's medical care and treatment.
17 Except in an *Emergency*, Respondent shall obtain medical care and treatment only from
18 the PCP and from health care providers to whom the PCP refers Respondent.
19 Respondent shall request that the PCP document all referrals in the medical record.
20 Respondent shall promptly inform the PCP of Respondent's rehabilitation efforts and
21 provide a copy of this Order the PCP. Respondent shall also inform all other health care
22 providers who provide medical care or treatment that Respondent is participating in MAP.

23 a. "*Emergency*" means a serious accident or sudden illness that, if not
24 treated immediately, may result in a long-term medical problem or loss of life.

25 6. **Medication.** Except in an *Emergency*, Respondent shall take no

1 *Medication* unless the PCP or other health care provider to whom the PCP refers
2 Respondent prescribes the *Medication*. Respondent shall not self-prescribe any
3 *Medication*.

4 a. "*Medication*" means a prescription-only drug, controlled substance,
5 and over-the counter preparation, other than plain aspirin, plain ibuprofen,
6 and plain acetaminophen.

7 7. If a controlled substance is prescribed, dispensed, or is administered
8 to Respondent by any person other than PCP, Respondent shall notify the PCP in writing
9 within 48 hours and notify the MAP Director immediately. The notification shall contain all
10 information required for the medication log entry specified in paragraph 8. Respondent
11 shall request that the notification be made a part of the medical record. This paragraph
12 does not authorize Respondent to take any *Medication* other than in accordance with
13 paragraph 6.

14 8. **Medication Log.** Respondent shall maintain a current legible log of
15 all *Medication* taken by or administered to Respondent, and shall make the log available to
16 the Board Staff upon request. For *Medication* (other than controlled substances) taken on
17 an on-going basis, Respondent may comply with this paragraph by logging the first and
18 last administration of the *Medication* and all changes in dosage or frequency. The log, at
19 a minimum, shall include the following:

- 20 a. Name and dosage of *Medication* taken or administered;
21 b. Date taken or administered;
22 c. Name of prescribing or administering physician;
23 d. Reason *Medication* was prescribed or administered.

24 This paragraph does not authorize Respondent to take any *Medication* other
25 than in accordance with paragraph 6.

1 9. **No Alcohol or Poppy Seeds.** Respondent shall not consume alcohol
2 or any food or other substance containing poppy seeds or alcohol.

3 10. **Biological Fluid Collection.** During all times that Respondent is
4 physically present in the State of Arizona and such other times as Board Staff may direct,
5 Respondent shall promptly comply with requests from Board Staff or MAP Director to
6 submit to witnessed biological fluid collection. If Respondent is directed to contact an
7 automated telephone message system to determine when to provide a specimen,
8 Respondent shall do so within the hours specified by Board Staff. For the purposes of this
9 paragraph, in the case of an in-person request, "promptly comply" means "immediately."
10 In the case of a telephonic request, "promptly comply" means that, except for good cause
11 shown, Respondent shall appear and submit to specimen collection not later than two
12 hours after telephonic notice to appear is given. The Board in its sole discretion shall
13 determine good cause.

14 11. Respondent shall provide Board Staff in writing with one telephone
15 number that shall be used to contact Respondent on a 24 hour per day/seven day per
16 week basis to submit to biological fluid collection. For the purposes of this section,
17 telephonic notice shall be deemed given at the time a message to appear is left at the
18 contact telephone number provided by Respondent. Respondent authorizes any person
19 or organization conducting tests on the collected samples to provide testing results to the
20 Board and the MAP Director.

21 12. Respondent shall cooperate with collection site personnel regarding
22 biological fluid collection. Repeated complaints from collection site personnel regarding
23 Respondent's lack of cooperation regarding collection may be grounds for termination
24 from MAP.

25 13. **Out of State Travel and/or Unavailability at Home or Office**

1 **Telephone Number.** Respondent shall provide Board Staff at least three business days
2 advance written notice of any plans to be away from office or home when such absence
3 would prohibit Respondent from responding to an order to provide a biological fluid
4 specimen or from responding to communications from the Board. The notice shall state
5 the reason for the intended absence from home or office, and shall provide a telephone
6 number that may be used to contact Respondent.

7 14. **Payment for Services.** Respondent shall pay for all costs,
8 including personnel and contractor costs, associated with participating in MAP at
9 time service is rendered, or within 30 days of each invoice sent to Respondent.

10 15. **Examination.** Respondent shall submit to mental, physical, and
11 medical competency examinations at such times and under such conditions as directed by
12 the Board to assist the Board in monitoring Respondent's ability to safely perform as a
13 physician and Respondent's compliance with the terms of this Order.

14 16. **Treatment.** Respondent shall submit to all medical, substance
15 abuse, and mental health care and treatment ordered by the Board.

16 17. **Obey All Laws.** Respondent shall obey all federal, state and local
17 laws, and all rules governing the practice of medicine in the State of Arizona.

18 18. **Interviews.** Respondent shall appear in person before the Board and
19 its Staff and MAP committees for interviews upon request, upon reasonable notice.

20 19. **Address and Phone Changes, Notice.** Respondent shall
21 immediately notify the Board in writing of any change in office or home addresses and
22 telephone numbers.

23 20. **Relapse, Violation.** In the event of chemical dependency relapse by
24 Respondent or Respondent's use of drugs or alcohol in violation of the Order,
25 Respondent's license shall be **REVOKED**. Respondent agrees to waive formal hearing on

1 the revocation. In the alternative, Respondent may **SURRENDER HIS LICENSE** if he
2 agrees in writing to being impaired by alcohol or drug abuse. A.R.S. § 32-1452(G).

3 21. **Notice Requirements.**

4 **(A)** Respondent shall immediately provide a copy of this Order to all
5 employers and all hospitals and free standing surgery centers where Respondent currently
6 has privileges. Within 30 days of the date of this Order, Respondent shall provide the
7 Board with a signed statement of compliance with this notification requirement. Upon any
8 change in employer or upon the granting of privileges at additional hospitals and free
9 standing surgery centers, Respondent shall provide the employer, hospital or free standing
10 surgery center with a copy of this Order. Within 30 days of a change in employer or upon
11 the granting of privileges at additional hospitals and free standing surgery centers,
12 Respondent shall provide the Board with a signed statement of compliance with this
13 notification requirement.

14 **(B)** Respondent is further required to notify, in writing, all employers,
15 hospitals and free standing surgery centers where Respondent currently has or in the
16 future gains employment or privileges, of a chemical dependency relapse, use of drugs or
17 alcohol in violation of this Order and/or entry into a treatment program. Within seven days
18 of any of these events Respondent shall provide the Board written confirmation of
19 compliance with this notification requirement.

20 22. **Public Record.** This Order is a public record.

21 23. **Out-of-State.** In the event Respondent resides or practices as a
22 physician in a state other than Arizona, Respondent shall participate in the rehabilitation
23 program sponsored by that state's medical licensing authority or medical society.
24 Respondent shall cause the monitoring state's program to provide written reports to the
25 Board regarding Respondent's attendance, participation, and monitoring. The reports

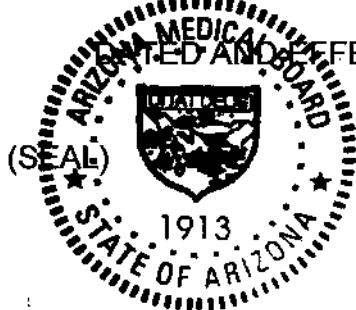
1 shall be due quarterly on or before the 15th day of March, June, September, and
2 December of each year, until the Board terminates this requirement in writing. The
3 monitoring state's program and Respondent shall immediately notify the Board if
4 Respondent: a) is non-compliant with any aspect of the monitoring requirements; b)
5 relapses; c) tests positive for controlled substances; d) has low specific gravity urine drug
6 test(s), missed and/or late urine drug tests, or otherwise rejected urine drug tests; and e) is
7 required to undergo any additional treatment.

8 24. This Order supersedes all previous consent agreements and
9 stipulations between the Board and/or the Executive Director and Respondent.

10 25. The Board retains jurisdiction and may initiate new action based upon
11 any violation of this Order.

12 2. This Order is the final disposition of case number MD-08-0601A.

13 EXECUTED AND EFFECTIVE this 5TH day of FEBRUARY, 2009.



14 ARIZONA MEDICAL BOARD

15 By

16 Lisa S. Wynn
17 Executive Director

18 ORIGINAL of the foregoing filed
19 this 5th day of February 2009 with:

20 Arizona Medical Board
21 9545 E. Doubletree Ranch Road
22 Scottsdale, AZ 85258

23 EXECUTED COPY of the foregoing mailed
24 this 5th day of February, 2009 to:

25 Brian H. Perlmutter, M.D.
Address of Record

Kimberly Corley
Investigational Review